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November 3, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room TW-A325
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte Presentation*
In the Matter of Review of the Commission's Regulations Governing Television
Broadcasting, MM Docket No. 91-221

Dear Ms. Salas:

On Friday, November 3, 2000, I left a voice mail message with Karen Edwards Onyeije of Chairman Kennard's legal staff, on behalf of the Office of Communications, Inc. of the United Church of Christ, Black Citizens for a Fair Media, Center for Media Education, Civil Rights Forum, League of United Latin American Citizens, Philadelphia Lesbian and Gay Task Force, Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights, Wider Opportunities for Women and Women's Institute for Freedom of the Press ("UCC *et al.*"), regarding the above-referenced proceeding.

UCC *et al.* filed a timely Petition for Reconsideration of the Commission's Order in the proceeding, which is still pending. UCC *et al.* remains concerned about a number of issues concerning the Commission's current Duopoly Rule. UCC *et al.* is especially concerned that the Rule appears to allow VHF-VHF duopolies, because these combinations appear to directly contravene Congressional intent. In my voice mail message, I discussed a section of the Telecommunications Act of 1996 Conference Committee Report that discussed broadcast ownership rules. Within this section, I highlighted the sentence stating that: "It is the intention of the conferees that, if the Commission revises its multiple ownership rules, it shall permit VHF-VHF combinations only in compelling circumstances." A copy of the pertinent section of the

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas

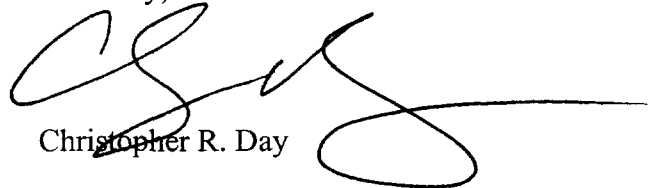
November 3, 2000

Page 2

Conference Committee report is attached to this *ex parte* letter. Accordingly, based on this provision of the Conference Committee Report and previous submissions to the Commission, UCC *et al.* again urge the Commission to revise the Duopoly Rule to preserve diversity and localism.

In compliance with the Commission's rules regarding *ex parte* presentations, an original and one copy of the above-referenced materials are being filed with the Commission for inclusion in the public record. Should you have any questions, please feel free to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to be 'CR Day', with a long horizontal flourish extending to the right.

Christopher R. Day

Attachment

cc: Karen Edwards Onyeije

TELECOMMUNICATIONS ACT OF 1996

FEBRUARY 1, 1996.—Ordered to be printed

Mr. PRESSLER, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 652]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 652), to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) *SHORT TITLE.*—This Act may be cited as the “Telecommunications Act of 1996”.

(b) *REFERENCES.*—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.).

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title; references.
- Sec. 2. Table of contents.
- Sec. 3. Definitions.

audio quality and visual resolution. Existing spectrum as that spectrum purposes as of the date of enactment.

amendment directs the Commission, for advanced television services, or such licenses to incumbent broadcast and authorizes the Commission to permit broadcasters to use such supplementary services. Apart from the section leaves the final determination to the broadcasters. This section of spectrum apart from the main supplementary uses, provided the for such services is consistent with designated by the Commission for the services.

the Commission to prescribe regulation of any advanced television services, including HDTV services. the regulation of ancillary and supplementary that Commission regulations that be applicable to the offering of ancillary person. This section, however, specifies status on any of these ancillary

the Commission to adopt any technology necessary to assure signal quality for other services, that the Commission may require concerning minimum broadcast standards for both NTSC and ATV services. that if the Commission issues licenses, it shall precondition such issuance to the other of the licenses be subject to its regulations. Subsection (c) requires that the Commission must surrender the license on public policy through obtaining television reception of the public. This provision is designed to ensure that the Commission would be for temporary simulation in due course, one of the licensed Commission for assignment by competition requires that the Commission must surrender the license on public policy through obtaining television reception of the public. This provision is designed to ensure that the Commission would be for temporary simulation in due course, one of the licensed Commission for assignment by competition requires that the Commission must surrender the license on public policy through obtaining television reception of the public.

the Commission to establish a fee for supplementary services if subscription fees apart from commercial advertising to receive such services.

the Commission to conduct an evaluation of the date it issues its licenses for ad-

In subsection (f), the House adopts the Commission's definition of high definition television.

Conference agreement

The conference agreement adopts the House amendment with modifications. The conference agreement retains the requirement in the House amendment that the Commission condition the issuance of a new license on the return, after some period, of either the original broadcast license or the new license. However, the conference agreement leaves to the Commission the determination of when such licenses shall be returned and how to reallocate returned spectrum. With respect to paragraph (b)(3), the conferees do not intend this paragraph to confer must carry status on advanced television or other video services offered on designated frequencies. Under the 1992 Cable Act, that issue is to be the subject of a Commission proceeding under section 614(b)(4)(B) of the Communications Act. Further, the conference agreement also adopts the Senate language that the Act's public interest obligations extend to the new licenses and services. The conference agreement modifies the House amendment to provide that if the Commission decides to issue additional licenses for ATV services, it should limit the initial eligibility to broadcast licensees.

SECTION 202—BROADCAST OWNERSHIP

Senate bill

Section 207(b) of the Senate bill requires the Commission to change its rules regarding the amount of national audience a single broadcast licensee may reach. The current cap is 25% of the nation's television households. The Senate bill raises that to 35%. Section 207 directs the Commission to eliminate its rules regarding the number of radio stations one entity may own, either nationally or within a particular market. The Commission may refuse a transfer of a radio license if it would result in an undue concentration of control or would thereby harm competition. Section 207(b)(3) grandfathers existing television local marketing agreements (LMAs). Section 207(b)(4) eliminates the cable-broadcast crossownership ban in section 613(a) of the Communications Act, and the Commission is also required to review its ownership rules biennially, as part of its overall regulatory review required by new section 259 of the Communications Act. This provision is effective upon enactment.

House amendment

Section 302 of the House amendment adds a new section 337 to the Communications Act addressing broadcast ownership. Section 337, subject to specified restrictions and consistent with the cross-ownership restrictions of section 613(a) of the Communications Act, prohibits the Commission from prescribing or enforcing any regulation which prohibits or limits, on a national or local basis, a licensee from holding any form of ownership or other interest in two or more broadcast stations or in a broadcast station and any other medium of mass communication. This section also prohibits the Commission from prescribing or enforcing any regulation

which prohibits a person or entity from owning, operating, or controlling two or more networks of broadcast stations or from owning, operating, or controlling a network of broadcast stations and any other medium of mass communications. Section 337(b)(1) eliminates current limits placed on television audience nationwide and places new limits on ownership of television stations by a single entity at a national audience reach exceeding 35 percent for the year following enactment of this section. This section directs the Commission to conduct a study of the operation of these national ownership limitations and to submit a report to Congress on the development of competition in the television marketplace and the need, if any, to revisit these limitations.

Section 337(b)(2) sets forth the circumstances under which one entity may own or operate two television stations in a local market. Subparagraph (B) creates a presumption in favor of UHF/UHF and UHF/VHF combinations. Subparagraph (C) clarifies that the Commission may also permit VHF/VHF combinations where it determines that doing so will not harm competition and diversity.

Subsection (c) permits the Commission, under certain circumstances, to consider concentrations of local media interests in proceedings to grant, renew or authorize the assignment of station licenses. In a proceeding to grant, renew, or authorize the assignment of any station license under this title, the Commission may deny the application if the Commission determines that the combination of such station and more than one other non-broadcast media of mass communication would result in an undue concentration of media voices in the respective local market. The Commission shall not grant applications that would result in two or fewer persons or entities controlling all the media of mass communications in the market. There is no requirement that any existing interests be divested, but the Commission may condition the grant of an application to acquire additional media interests.

Subsection (d) clarifies that any Commission rule prescribed prior to the date of enactment of this legislation that is inconsistent with the requirements of this section is repealed on the date of enactment. Nothing in subsection (d) is to be construed to prohibit the continuation or renewal of any television local marketing agreement in effect on the date of enactment.

Conference agreement

Section 202(a) of the conference agreement directs the Commission to modify its multiple ownership rules to eliminate its limitations on the number of radio stations which may be owned or controlled nationally. New subsection (b) directs the Commission to further modify its rules with respect to the number of radio stations a party may own, operate or control in a local market. Subsection (b)(2) provides an exception to the local market limits, where the acquisition or interest in a radio station will result in an increase in the number of radio stations.

Subsection 202(c)(1) directs the Commission to modify its multiple ownership rules to eliminate the number of television stations which may be owned or controlled nationally and to increase the national audience reach limitation for television stations to 35 percent. Subsection (c)(2) directs the Commission to conduct a rule-

making proceeding to determine whether ownership of more than one television station should be retained, modified or eliminated. It is that, if the Commission revises the rules, it shall permit VHF-VHF combinations in certain circumstances.

Section 202(d) directs the Commission to review its policy with respect to its one to a market rule for the top fifty markets. The Commission's crossownership rules of radio and television, which it has implemented a waiver policy, but has implemented a waiver policy, potential for public interest benefits of such diversity interested are not threatened by adopting subsection (d), intend to extend to the top fifty markets. Also, in the Commission's view its television ownership rules generally consider whether generally to allow such combinations of a television station and a radio station in the same service. The Commission's future implementation of its waiver policy, as well as any changes to its pending review, will take into account the need for diversity in today's radio market and the rationale for subsection (d).

Subsection (e) directs the Commission to amend CFR 73.658(g) to permit a television station or entity that maintains two or more dual or multiple networks are composed of four existing networks (ABC, CBS, NBC, and PBS) and one of the four existing networks and one of the four existing networks (WBTN, UPN). The conferees do not intend to apply if such networks are not operated in a way that there is no substantial overlap in the territory of the stations comprising each such network.

Subsection (f) directs the Commission to modify its rules to ensure carriage, channel position and treatment of non-affiliated broadcast stations affiliated with a broadcast network.

Subsection (g) grandfathers LMAs in effect on the date of enactment of this legislation and allows them to continue consistent with the Commission's rules. The Commission's contributions of television LMAs and that this legislation does not deprive the public of the benefits of LMAs that were otherwise in compliance with the rules on the date of enactment.

Subsection (h) directs the Commission to review the rules adopted under section 202 and all of its rules. In its review, the Commission shall determine whether the ownership rules, including those adopted under section 202, are necessary in the public interest as they exist. Based on its findings in such a review, the Commission may choose to repeal or modify any regulation it determines to be necessary.

entity from owning, operating, or controlling broadcast stations or from owning, operating, or controlling a network of broadcast stations and any communications. Section 337(b)(1) eliminates television audience nationwide and the number of television stations by a single entity exceeding 35 percent for the year of enactment. This section directs the Commission to report to Congress on the development of the television marketplace and the need for rules.

Section 337(b)(2) directs the Commission to determine the circumstances under which one or more television stations in a local market may be licensed on a presumption in favor of UHF/UHF and VHF/VHF combinations where it determines that the Commission's action will harm competition and diversity.

Section 337(b)(3) directs the Commission, under certain circumstances of local media interests in a local market, to authorize the assignment of station licenses, to renew, or to authorize the assignment of this title, the Commission may determine that the Commission's action would result in an undue concentration of ownership in the respective local market. The Commission may determine that two or fewer persons own all the media of mass communication in the market. The Commission may condition the grant of licenses on the basis of local media interests.

Section 337(b)(4) directs the Commission to prescribe any rule under this section that is inconsistent with the Commission's action on the date of enactment. Section 337(b)(5) is to be construed to prohibit any television local marketing agreement.

Section 337(b)(6) directs the Commission to eliminate its limitations which may be owned or controlled by one or more persons. Section 337(b)(7) directs the Commission to respect to the number of radio stations or control in a local market. Subsection (b) directs the Commission to the local market limits, and the number of radio stations will result in the number of radio stations.

Section 337(b)(8) directs the Commission to modify its multiple ownership rules to increase the number of television stations licensed nationwide and to increase the number of television stations to 35 percent of the Commission to conduct a rule-

making proceeding to determine whether its rules restricting ownership of more than one television station in a local market should be retained, modified or eliminated. It is the intention of conferees that, if the Commission revises the multiple ownership rules, it shall permit VHF-VHF combinations only in compelling circumstances.

Section 202(d) directs the Commission to extend its waiver policy with respect to its one to a market ownership rules to any of the top fifty markets. The Commission now generally bans crossownerships of radio and television stations in the same market, but has implemented a waiver policy which recognizes the potential for public interest benefits of such combinations when bedrock diversity interested are not threatened. The conferees in adopting subsection (d), intend to extend the benefits of this policy to the top fifty markets. Also, in the Commission's proceeding to review its television ownership rules generally, the Commission is considering whether generally to allow such local crossownerships, including combinations of a television station and more than one radio station in the same service. The conferees expect that the Commission's future implementation of its current radio-television waiver policy, as well as any changes to its rules it may adopt in its pending review, will take into account the increased competition and the need for diversity in today's radio marketplace that is the rationale for subsection (d).

Subsection (e) directs the Commission to revise its rules at 47 CFR 73.658(g) to permit a television station to affiliate with a person or entity that maintains two or more networks unless such dual or multiple networks are composed of (1) two or more of the four existing networks (ABC, CBS, NBC, FOX) or, (2) any of the four existing networks and one of the two emerging networks (WBTN, UPN). The conferees do not intend these limitations to apply if such networks are not operated simultaneously, or if there is no substantial overlap in the territory served by the group of stations comprising each such networks.

Subsection (f) directs the Commission to revise its rules to permit crossownership interests between a broadcast network and a cable system. If necessary, the Commission is directed to revise its rules to ensure carriage, channel positioning and nondiscriminatory treatment of non-affiliated broadcast stations by cable systems affiliated with a broadcast network.

Subsection (g) grandfathers LMAs currently in existence upon enactment of this legislation and allows LMAs in the future, consistent with the Commission's rules. The conferees note the positive contributions of television LMAs and this subsection assures that this legislation does not deprive the public of the benefits of existing LMAs that were otherwise in compliance with Commission regulations on the date of enactment.

Subsection (h) directs the Commission to review its rules adopted under section 202 and all of its ownership rules biennially. In its review, the Commission shall determine whether any of its ownership rules, including those adopted pursuant to this section, are necessary in the public interest as the result of competition. Based on its findings in such a review, the Commission is directed to repeal or modify any regulation it determines is no longer in the

public interest. Apart from the biennial review required by subsection (h), the conferees are aware that the Commission already has several broadcast deregulation proceedings underway. It is the intention of the conferees that the Commission continue with these proceedings and conclude them in a timely manner.

Subsection (i) amends section 613(a) of the Communications Act by repealing the restriction on broadcast-cable crossownership. The conferees do not intend that this repeal of the statutory prohibition should prejudice the outcome of any review by the Commission of its rules. Subsection (i) also amends 613(a) by revising the cable-MMDS crossownership restriction so that it does not apply in any franchise area in which a cable operator faces effective competition.

SECTION 203—TERMS OF LICENSES

Senate bill

Section 207 of the Senate bill amends section 307(c) of the Communications Act to increase the term of license renewal for television licenses from five to ten years and for radio licenses from seven to ten years.

House amendment

Section 306 of the House amendment contains a similar provision but amends section 307(c) of the Communications Act to provide for a seven year license term for all broadcast licenses.

Conference agreement

The conference agreement adopts the House provisions but extends the license term for broadcast licensees to eight years for both television and radio.

SECTION 204—BROADCAST LICENSE RENEWAL PROCEDURES

Senate bill

Subsection (d) of section 207 amends the broadcast license renewal procedures. This subsection amends section 309 of the Communications Act by adding a new subsection (k) which gives the incumbent broadcaster the ability to apply for its license renewal without competing applications. A broadcaster would apply for its renewal, and the Commission would grant such a renewal, if, during the preceding term of its license the station has served the public interest, convenience, and necessity, has not made any serious violations of the Communications Act or of the Commission's rules, and has not, through other violations, shown a pattern of abuse.

The Commission may not consider whether the granting of a license to a person other than the renewal applicant might serve the public interest, convenience, and necessity prior to its decision to approve or deny the renewal application. Under this section, the Commission has discretion to consider what is a serious violation of the Communications Act. If a licensee does not meet those criteria, the Commission may either deny the renewal, or impose conditions on the renewal. Once the Commission, after conducting a hearing on the record, denies an application for renewal, it is then

able to accept applications for a construction permit or facilities of the former licensee.

Subparagraph (4) would require broadcast licensees to submit a summary of comments regarding violent programming in their renewal application.

House amendment

Section 305 of the House amendment amends section 309 of the Communications Act by adding a new subsection (k) mandating a change in the manner in which renewal applications are processed. Subsection (k) requires Commission consideration of the renewal application of a broadcast licensee without the contemporaneous consideration of competing applications. Under this subsection, the Commission would grant a renewal application if it finds that the licensee, during its term, had served the public interest, convenience, and necessity; there had been no serious violations of the Communications Act or Commission rules; and other violations of the Communications Act, which, taken together, indicate a pattern of abuse, do not exist. If the Commission finds that the licensee has failed to serve the public interest, convenience, and necessity, or if it could deny the renewal application on the basis of other violations, including renewal for a lesser term, the Commission may deny the renewal application or the renewal application could be considered in the context of competing applications for the license.

Conference agreement

The conference agreement adopts the House provisions with modifications to include the Senate provisions regarding signal piracy. The conference agreement sets an effective date for this section at May 1, 1990.

SECTION 205—DIRECT BROADCAST SATELLITE

Senate bill

Section 312(a) of the Senate bill amends section 312(a) of the Communications Act to extend the current definition of signal piracy to direct-broadcast services.

Section 312(b) amends section 303 of the Communications Act to clarify that the Commission has exclusive jurisdiction over the regulation of direct broadcast satellite (DBS) services.

House amendment

The House has identical provisions to the Senate bill in the House amendment.

Conference agreement

The conference agreement adopts the House provisions with a conforming change to the definition of "direct broadcast satellite" to include DBS services.